

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8 Tribal Behavioral Health LLC, et al.,      )  
9  
10                                      Plaintiffs,      )  
11                                      vs.                                      )  
12                                      John R. Reeves III, et al.,      )  
13                                      Defendants.                                      )  
14

No. CV-22-00926-PHX-SPL

**ORDER**

15           Before the Court is Plaintiffs Tribal Behavioral Health LLC's and Tribal Health  
16 LLC's (collectively, "Plaintiffs") Motion for Temporary Restraining Order ("TRO") and  
17 Preliminary Injunction (Doc. 2).<sup>1</sup> On May 31, 2022, the Court denied the Motion's request  
18 for a TRO, set an expedited briefing schedule for the parties, and set a Preliminary  
19 Injunction Hearing (the "Hearing") before this Court. (Doc. 9). The parties have fully  
20 briefed the Motion (Docs. 2, 16, 17) and the Hearing was held on June 14, 2022 (Doc. 24).  
21 Having read the parties' briefs and having heard their arguments, the Court now issues this  
22 Order granting Plaintiffs' Motion in part and as modified.

23 **I.     BACKGROUND**

24           Plaintiff Tribal Health LLC ("Tribal Health") is a company that focuses on  
25 Indigenous healthcare. (Doc. 2 at 2). Plaintiff Tribal Behavioral Health LLC ("TBH") is

26  
27 <sup>1</sup> Although the Motion's title refers only to a TRO, it also seeks a preliminary  
28 injunction. (Doc. 2 at 2 ("Plaintiffs seek a [TRO] and preliminary injunction to maintain  
the status quo until the parties can resolve this dispute through litigation.")).

1 an affiliated company formed by John Shufeldt, M.D., in September 2021 to develop and  
2 operate behavioral health centers on tribal lands by using Tribal Health’s reputation,  
3 relationships, and expertise. (*Id.*).

4 On October 1, 2021, TBH retained Defendant John R. Reeves III (“Defendant”) as  
5 a consultant to assist with business development. (Doc. 1 at 2). Dr. Shufeldt had previously  
6 contacted Defendant in “late February or early March 2021” and asked whether Defendant  
7 would be interested in partnering with him “to build and develop destination treatment  
8 centers with a behavioral health focus.” (Doc. 16 at 5). During that conversation and the  
9 others that followed, Defendant alleges that Dr. Shufeldt implied the venture would be a  
10 partnership between them. (*Id.*). Defendant argues that he only agreed to the consulting  
11 work in October 2021 based on Dr. Shufeldt’s repeated promises that Defendant would be  
12 an equal partner and owner of TBH. (*Id.* at 1). He signed a Consulting Services Agreement  
13 with TBH under which he agreed to keep the company’s Confidential Information in strict  
14 confidence and to not disclose or use it, except in performing his services. (Doc. 1 at 2). In  
15 October 2021, Defendant began pursuing opportunities on TBH’s behalf by relying on his  
16 pre-existing experience with Indigenous healthcare and relationships with Indigenous  
17 communities. (*Id.*; Doc. 16 at 3–4). One such opportunity involved the conversion of an  
18 old casino into a behavioral health center for the Elk Valley Rancheria Tribe (“Elk Valley”) in  
19 Del Norte County, California (the “County”). (Doc. 16 at 9). Defendant asserts that the  
20 project was first proposed to him by LaWanda Green—an Elk Valley councilmember—in  
21 early 2020. (*Id.*). According to Ms. Green, she and Defendant spoke about the idea again  
22 in May 2021. (Doc. 16-1 at 15). However, no other significant advances were made on the  
23 project until early 2022, once Defendant was a TBH consultant.

24 Sometime between October 2021 and April 2022, Defendant shared the Elk Valley  
25 opportunity with Dr. Shufeldt and TBH. On April 8, 2022, Defendant informed TBH that  
26 the tribe and the County were “on board” and “willing [to let TBH] manage the [behavioral  
27 health] services.” (Doc. 2 at 4). On April 26, 2022, Defendant held a meeting with Elk  
28 Valley councilmembers and County supervisors in which he apparently introduced himself

1 as CEO and Partner of TBH, (Doc. 16-2 at 5), and presented the proposed behavioral health  
2 facility. (Doc. 2 at 4). All parties expressed interest in beginning development. (Doc. 1 at  
3 3). The next day, Defendant followed up with the County via email. (*Id.*). The County again  
4 expressed interest in the project, and Defendant told the County that TBH would prepare a  
5 report for its review; on April 28, 2022, TBH retained Via Healthcare Consulting (“Via  
6 Healthcare”) to prepare the report. (*Id.*). The report contained a feasibility analysis related  
7 to offering behavioral health services in the County and was intended to aid TBH in making  
8 a final presentation to the tribe and the County. (*Id.* at 5). All of this occurred while  
9 Defendant was contracted as a TBH consultant.

10 During this time, Defendant alleges that he still expected to become an equal partner  
11 with Dr. Shufeldt in the TBH venture and that he expressed this to Dr. Shufeldt on several  
12 occasions. (Doc. 16 at 7). Defendant alleges that he was also frustrated at the lack of  
13 progress, accountability, and structure at TBH. (*Id.*). On April 29, 2022, Defendant  
14 accepted a full-time, salaried position as CEO of TBH, (Doc. 1 at 4), still allegedly under  
15 the impression that he would eventually become equal partners with Dr. Shufeldt and own  
16 at least 50% of the company. (Doc. 16 at 7). He signed a Confidentiality and Non-  
17 Disclosure Agreement. (Doc. 1 at 4). On May 2, 2022 and May 3, 2022, respectively,  
18 Defendant and Dr. Shufeldt received emails identifying potential business opportunities  
19 with several tribes. (Doc. 2 at 6). The list of customer leads was generated “by a third-party  
20 B2B lead vendor, at TBH’s cost.” (*Id.*). On May 9, 2022, Defendant sent an email to Dr.  
21 Shufeldt and others stating that leads generated for TBH “were to be sent ‘[his] way’ for  
22 review and further triage[d] according to whether prospective tribal customer leads were  
23 interested in funding, operations/facilities, or staffing services.” (*Id.* at 6–7). Plaintiffs  
24 allege that Defendant was “position[ing] himself as the direct recipient of confidential sales  
25 and marketing leads generated for the exclusive benefit of TBH.” (*Id.* at 7).

26 On May 7, 2022, Defendant learned—apparently for the first time—that there were  
27 two other partners who owned TBH in addition to Dr. Shufeldt and that Defendant would  
28 never own more than 30% of the company. (Doc. 16 at 7). On May 11, 2022, Via

1 Healthcare sent Defendant the report it produced concerning the Elk Valley project. (Doc.  
2 1 at 5). Plaintiffs allege that, to this day, Defendant has failed to turn over the Via  
3 Healthcare report to TBH. (*Id.*). On May 15, 2022, Defendant emailed Dr. Shufeldt and  
4 reiterated his desire for a partnership/two-way deal. (*Id.* at 6). Dr. Shufeldt declined and on  
5 May 15, 2022, Defendant resigned as CEO. (*Id.*). After Defendant's resignation, TBH sent  
6 a letter to Defendant and reminded him of his duty of confidentiality and warned him  
7 against interference or usurpation of TBH's corporate opportunities, including the Elk  
8 Valley project. (*Id.*). TBH demanded that Defendant turn over the Via Healthcare report,  
9 which TBH claimed was "Confidential Information." (*Id.*). On May 19, 2022, TBH paid  
10 \$25,500 to Via Healthcare for the report; the next day, Via Healthcare sent an invoice to  
11 TBH indicating that TBH still owed an additional \$25,500 for the report, bringing its total  
12 cost to \$51,000. (*Id.*).

13 Defendant maintains that the business opportunities were based on his pre-existing  
14 contacts and that he has a right to pursue the projects on his own, including the Elk Valley  
15 project, because they were pending before TBH was even formed. (Doc. 16 at 8). On May  
16 27, 2022, Plaintiffs filed a Complaint (Doc. 1) and a Motion for Temporary Restraining  
17 Order and Preliminary Injunction (Doc. 2). Plaintiffs bring claims against Defendant for  
18 (i) breach of fiduciary duty, (ii) breach of non-disclosure agreement, (iii) intentional  
19 interference with business expectancy, (iv) misappropriation of trade secrets, and (v) unjust  
20 enrichment.<sup>2</sup> (Doc. 1 at 7–12). On May 31, 2022, the Court denied Plaintiffs' Motion for  
21 TRO on notice grounds. (Doc. 9). Plaintiffs seek injunctive relief to prevent Defendant  
22 from using his position as fiduciary and former-CEO of TBH to effectively steal the  
23 entirety of TBH's new business. (Doc. 2 at 8). Defendant argues Plaintiffs have no grounds  
24 to enjoin him from pursuing business opportunities with his own, pre-existing contacts.

---

25  
26 <sup>2</sup> Plaintiffs additionally name Pui Reeves—the wife of Mr. Reeves—as a Defendant  
27 in this matter. (Doc. 1 at 1). However, because the facts most relevant to deciding this  
28 Motion relate to Mr. Reeves and not to Mrs. Reeves, the Court will generally refer only to  
Mr. Reeves as being the Defendant.

(Doc. 16 at 8). Defendant maintains that the projects, including the Elk Valley project, are his own and that he only shared them with TBH based on Dr. Shufeldt's promise they would be equal partners. (*Id.* at 11).

## II. LEGAL STANDARD

A party seeking injunctive relief under Rule 65 of the Federal Rules of Civil Procedure must show that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of injunctive relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest.<sup>3</sup> *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124 (9th Cir. 2014); *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105-06 (9th Cir. 2012); *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). "The basic function of a preliminary injunction is to preserve the status quo pending a determination of the action on the merits." *Chalk v. U.S. Dist. Ct. Cent. Dist. of Cal.*, 840 F.2d 701, 704 (9th Cir. 1988). A preliminary injunction "is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (citation and internal quotations omitted). Where the movant seeks a mandatory injunction, rather than prohibitory, injunctive relief is "subject to a heightened scrutiny and should not be issued unless the facts and law clearly favor the moving party." *Dahl v. HEM Pharms. Corp.*, 7 F.3d 1399, 1403 (9th Cir. 1993).<sup>4</sup>

---

<sup>3</sup> The Ninth Circuit observes a "sliding scale" approach, in that these elements "are balanced, so that a stronger showing of one element may offset a weaker showing of another." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Thus, by example, an injunction can issue where there are "serious questions going to the merits" and a balance of hardships that tips sharply towards the plaintiff . . . so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Id.* at 1135.

<sup>4</sup> "A mandatory injunction orders a responsible party to take action," while "a prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Marlyn Nutraceuticals, Inc. v. Mucos*

### 1           **III.    DISCUSSION**

2           To determine whether a preliminary injunction is appropriate, the Court must now  
3 address each of the four *Winter* factors and decide whether Plaintiffs have made sufficient  
4 showings that each of the factors weigh in favor of injunctive relief.

#### 5           **A. Likelihood of Success on the Merits**

6           “To establish a substantial likelihood of success on the merits, [a plaintiff] must  
7 show ‘a fair chance of success.’” *In re Focus Media Inc.*, 387 F.3d 1077, 1086 (9th Cir.  
8 2004) (citation and internal quotations omitted). Under the Ninth Circuit’s sliding scale  
9 approach, an injunction may issue even where a plaintiff makes a somewhat *weaker*  
10 showing on the “likelihood of success” factor, so long as the plaintiff (i) establishes that  
11 there are at least “serious questions” going to the merits of the claim and (ii) makes a  
12 particularly strong showing on one of the other factors, such as irreparable harm or the  
13 balance of hardships. *See All. for the Wild Rockies*, 632 F.3d at 1131 (“This circuit has  
14 adopted and applied a version of the sliding scale approach under which a preliminary  
15 injunction could issue where the likelihood of success is such that ‘serious questions going  
16 to the merits were raised and the balance of hardships tips sharply in [plaintiff’s] favor.’”);  
17 *Shebanow v. First Magnus Fin. Corp.*, No. 3:10-cv-00765-RCJ-RAM, 2010 WL 5390132,  
18 at \*3 (D. Nev. Dec. 22, 2010) (“A claim can be weaker on the merits if it raises ‘serious  
19 questions’ and the amount of harm the injunction will prevent is very great.”).

20           “To prevail on the motion, plaintiffs need only show a likelihood of success on the  
21 merits/serious questions as to *one* of their claims for relief.” *De Anda Enters., Inc. v. JL*  
22 *Deanda Enters. LLC*, No. SA CV 16-2049-DOC (JCGx), 2017 WL 2960796, at \*2 (C.D.  
23 Cal. Apr. 11, 2017) (emphasis in original) (citation and internal quotations omitted). Here,  
24 although Plaintiffs assert five claims, they only address this factor with respect to two of  
25 them: breach of fiduciary duty and misappropriation of trade secrets. (Doc. 2 at 9–14).

26  
27           

---

*Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009). “The ‘status quo’ refers to the  
28 legally relevant relationship between the parties before the controversy arose.” *Ariz. Dream*  
*Act Coal. v. Brewer*, 757 F.3d 1053, 1060–61 (9th Cir. 2014).

1 Accordingly, this Court’s analysis will focus on Plaintiffs’ likelihood of success on only  
 2 these two claims and will “not consider herein all of [P]laintiffs’ claims nor all of the  
 3 grounds for [P]laintiffs’ claims.” *De Anda Enters., Inc.*, 2017 WL 2960796, at \*2.

#### 4 ***1. Breach of Fiduciary Duty***

5 Under Arizona law, the elements of a breach of fiduciary duty claim are “the  
 6 existence of a duty owed, a breach of that duty, and damages causally related to such  
 7 breach.” *Surowiec v. Cap. Title Agency, Inc.*, 790 F. Supp. 2d 997, 1004 (D. Ariz. 2011).  
 8 The parties here chiefly dispute whether Defendant had a fiduciary duty to Plaintiffs, and  
 9 more specifically, *when* that fiduciary duty was in existence. Plaintiffs argue that  
 10 Defendant had a fiduciary duty from the very beginning of his relationship with TBH—  
 11 that is, that the fiduciary relationship began on October 1, 2021 when Defendant signed the  
 12 Consulting Services Agreement (“CSA”) and became a consultant for TBH. According to  
 13 Plaintiffs, that fiduciary relationship continued until he resigned as TBH’s CEO on May  
 14 15, 2022. Defendant, however, argues that no fiduciary relationship existed *until* Defendant  
 15 became TBH’s CEO on April 29, 2022. Therefore, Defendant’s view is that he had a  
 16 fiduciary duty to Plaintiffs only during his two-week stint as CEO.

17 As a starting point, Defendant does not dispute that he had a fiduciary duty to  
 18 Plaintiffs while he was CEO of TBH—*i.e.*, between April 29, 2022, and May 15, 2022.  
 19 (See Doc. 16 at 12 (“The [fiduciary] duty attached when [Defendant] became CEO.”)).  
 20 Additionally, there is no question that Defendant’s fiduciary relationship with Plaintiffs  
 21 ceased upon his resignation as CEO. See *Standage v. Planned Inv. Corp.*, 160 Ariz. 287,  
 22 291 (Ct. App. 1988) (quoting *Microbiological Rsch. Corp. v. Muna*, 625 P.2d 690, 695  
 23 (Utah 1981)) (“When a corporate officer ceases to act as such, because of his resignation  
 24 or removal, the fiduciary relationship ceases.”). Thus, the dispute only concerns whether  
 25 Defendant had a fiduciary relationship with Plaintiffs during the time he was a consultant  
 26 for TBH, between October 1, 2021 and April 29, 2022.

27 Under Arizona law, “a fiduciary relationship is a confidential relationship whose  
 28 attributes include great intimacy, disclosure of secrets, or [e]ntrusting of power.” *Standard*



1 *Chartered PLC v. Price Waterhouse*, 190 Ariz. 6, 24 (Ct. App. 1996) (citations and internal  
 2 quotations omitted). In a fiduciary relationship, the beneficiary becomes a “trusting party”  
 3 who is impelled or induced into “relax[ing] the care and vigilance he would ordinarily  
 4 exercise.” *Cook v. Orkin Exterminating Co., Inc.*, 227 Ariz. 331, 334 (Ct. App. 2011). The  
 5 fiduciary, on the other hand, “is bound to act for the benefit of the other.” *Taegeer v. Cath.*  
 6 *Fam. & Cmty. Servs.*, 196 Ariz. 285, 290 (Ct. App. 1999). At the same time, “the fiduciary  
 7 holds ‘superiority of position’ over the beneficiary,” which “may be demonstrated in  
 8 material aspects of the transaction at issue by a ‘substitution of the fiduciary’s will.’”  
 9 *Standard Chartered*, 190 Ariz. at 24 (citations omitted). The facts must demonstrate that  
 10 the relationship involved “peculiar reliance in the trustworthiness of another”; “[m]ere trust  
 11 in another’s competence or integrity does not suffice.” *Id.* (citations omitted). The level of  
 12 intimacy and trustworthiness in a fiduciary relationship “distinguishes [it] from an arm’s  
 13 length relationship.” *Id.*

14 In this case, the CSA—rather than creating a fiduciary relationship—created a  
 15 contractual arrangement under which Defendant agreed to perform consulting services and  
 16 Plaintiffs agreed to pay for those services. *See Cook*, 227 Ariz. at 334 (citation omitted)  
 17 (“Generally, commercial transactions do not create a fiduciary relationship unless one party  
 18 agrees to serve in a fiduciary capacity.”); *see also Urias v. PCS Health Sys., Inc.*, 211 Ariz.  
 19 81, 87 (Ct. App. 2005) (citation omitted) (“A commercial contract creates a fiduciary  
 20 relationship only when one party agrees to serve in a fiduciary capacity.”). In fact, the CSA  
 21 explicitly *rejects* any sort of fiduciary characterization of the parties’ relationship:

22 10.1. Relationship Between Parties. Consultant is an  
 23 independent contractor and is not an employee or agent of  
 24 Company. Nothing contained in this Agreement shall be  
 25 construed to (i) give either party the power to direct or control  
 26 the activities of the other, (ii) constitute the parties as partners,  
 joint venturers, agents, co-owners, or otherwise as participants  
 in a joint undertaking, or (iii) allow either party to create or  
 assume any obligation on behalf of the other party for any  
 purpose whatsoever.

27 (Doc. 22-1 at 7); *see also Urias*, 211 Ariz. at 87 (“The Agreement . . . specified that the  
 28



1 parties were independent contractors and did not purport to create a fiduciary  
 2 relationship.”). If Plaintiffs intended a fiduciary relationship—as they now argue existed—  
 3 they could have negotiated for language in the CSA to that effect. Instead, the above CSA  
 4 provision is strong evidence that no fiduciary relationship was intended by the parties.<sup>5</sup>

5 Even if the Court focuses on the parties’ relationship as it actually transpired—and  
 6 sets aside the CSA entirely—the Court still cannot find evidence of a fiduciary  
 7 relationship.<sup>6</sup> Plaintiffs failed to provide evidence suggesting that Defendant agreed to  
 8 serve as Plaintiffs’ fiduciary or “that the parties’ relationship involved any of the hallmarks  
 9 of a fiduciary association: intimacy, secrets, or the entrusting of power.” *Cook*, 227 Ariz.  
 10 at 334. In fact, Plaintiffs’ briefing fails to address the issue altogether. Instead, Plaintiffs  
 11 rely on the fiduciary duties that arose from Defendant’s role as CEO and do not make any  
 12 explicit argument that such duties were attached to Defendant’s consulting work as well.  
 13 (See Doc. 2 at 9–10). At the Hearing, Plaintiffs were directly asked whether Defendant had  
 14 any fiduciary duty to TBH prior to him becoming CEO. Given an opportunity to provide  
 15 the argument that was absent from their briefing, Plaintiffs’ counsel only responded “yes”  
 16 and did not elaborate. (Hearing Tr. at 40:22–41:3).<sup>7</sup>

---

17  
 18 <sup>5</sup> The Court finds it telling that Plaintiffs opted *against* filing the entire CSA as an  
 19 exhibit to their Motion. Instead, Plaintiffs merely quoted a single, favorable section from  
 20 the CSA and withheld the rest. (See Doc. 2 at 3). By doing so, Plaintiffs kept under wraps  
 21 the above-excerpted provision concerning the “Relationship Between Parties.” The CSA  
 was eventually provided to the Court—albeit by Defendant, not Plaintiffs—after the Court  
 requested its filing at the Preliminary Injunction Hearing. (See Doc. 22-1).

22 <sup>6</sup> Under California law, “even in cases where the contract itself does not establish a  
 23 fiduciary relationship, extrinsic factors may ‘elevate a contractual relationship to a  
 24 fiduciary one.’” *Alvarado Orthopedic Rsch., L.P. v. Linvatec Corp.*, No. 11-CV-246-IEG  
 25 (RBB), 2011 WL 3703192, at \*4 (S.D. Cal. Aug. 23, 2011). For purposes of this analysis,  
 26 the Court presumes that Arizona law is in agreement—that is, that the contract is not  
 27 dispositive, and that “extrinsic factors” may indicate the existence of a fiduciary  
 28 relationship even where the contract provides otherwise. That said, Plaintiffs fail to  
 provide—and this Court was itself unable to find—any Arizona caselaw explicitly aligning  
 with California law on this point.

1 That said, the issue arose at other points during the Hearing and—in those  
 2 instances—Plaintiffs’ counsel cited to an Arizona Court of Appeals case, *AMERCO v.*  
 3 *Shoen*, 184 Ariz. 150 (Ct. App. 1995), for the apparent proposition that Arizona law  
 4 automatically imposes a fiduciary relationship between a corporation and its directors,  
 5 officers, employees, agents, and consultants or advisors. (*See* Hearing Tr. at 11:6–11:8;  
 6 26:13–26:21; 50:4–50:21).<sup>8</sup> After reviewing *AMERCO*, however, the Court finds this to  
 7 overstate the case’s holding. In *AMERCO*, the Court of Appeals addressed whether the trial  
 8 court inadequately instructed the jury as to the plaintiffs’ breach of fiduciary duty claim.  
 9 *AMERCO*, 184 Ariz. at 156. One of the jury instructions provided that “[t]he relationships  
 10 between a corporation and its directors and officers, employees, agents and consultants or  
 11 advisors are fiduciary relationships.” *Id.* at 157. This Court’s review of caselaw, as  
 12 discussed above, shows that the existence of a fiduciary relationship depends less on the  
 13 alleged fiduciary’s job title and more on the substantive nature of the parties’ relationship.  
 14 Despite what the jury instruction in *AMERCO* may imply, just because one acts as a  
 15 company’s “consultant” does not automatically mean that he or she is the company’s  
 16 fiduciary; instead, a fiduciary relationship only exists where the parties’ relationship is  
 17 defined by a level of “intimacy, secrets, or the entrusting of power.” *Cook*, 227 Ariz. at  
 18 334. This is particularly true where—as here—the individual is merely an independent  
 19 contractor, rather than an employee, of the company. Although Defendant’s job title may  
 20 have been as a “consultant” of TBH, Plaintiffs have failed to provide sufficient evidence  
 21 for a finding that this role created a fiduciary relationship.

22 All told, Plaintiffs have not provided facts that give rise to a fiduciary relationship  
 23 prior to Defendant becoming CEO, and the Court will not accept Plaintiffs’ conclusory  
 24 allegation that such a relationship existed. The Court finds that no fiduciary relationship  
 25

---

26 <sup>7</sup> “Hearing Transcript” refers to the transcript of the Preliminary Injunction Hearing  
 27 held before this Court on June 14, 2022.

28 <sup>8</sup> Plaintiffs also cited this case in their Motion. (*See* Doc. 2 at 10).

1 existed during the approximately seven months that Defendant was TBH's consultant and  
2 that the fiduciary relationship only existed during Defendant's short tenure as CEO.

3 Having determined that a fiduciary relationship existed only during the two weeks  
4 Defendant was CEO, the Court now returns to its overarching inquiry as to whether  
5 Plaintiffs have shown a likelihood of success on the merits of their claim that Defendant  
6 breached that duty. The Arizona Supreme Court has characterized the fiduciary duty as  
7 imposing obligations of loyalty, good faith in dealings, and requiring a high degree of care.  
8 *In re Sky Harbor Hotel Props., LLC*, 246 Ariz. 531, 533 (2019). It follows that there are  
9 more ways than one for a breach of the fiduciary duty to occur. Plaintiffs' breach theory is  
10 based on the corporate opportunity doctrine, and Plaintiffs' allegation that Defendant  
11 usurped—and intends to continue to usurp—corporate opportunities belonging to  
12 Plaintiffs. Plaintiffs allege that Defendant used his position as CEO to develop the Elk  
13 Valley opportunity, and then resigned from his position as CEO so that he could pursue the  
14 Elk Valley project in his individual capacity, thereby “stealing” the opportunity for himself.  
15 (Doc. 2 at 10). Defendant does not deny that he intends to pursue the Elk Valley project on  
16 his own, but asserts that doing so does not constitute a breach because (i) he gained access  
17 to the opportunity *prior to* his time as CEO and therefore prior to the existence of any  
18 fiduciary duties; (ii) he did not use his position as CEO to develop the opportunity or  
19 otherwise gain any particular advantage over TBH in pursuing the project; and (iii) he is  
20 free to compete with TBH now that their fiduciary relationship is over. (Doc. 16 at 12–13).

21 “The corporate opportunity doctrine ‘prohibits fiduciary usurpation of a corporate  
22 opportunity.’” *Taser Int’l, Inc. v. Ward*, 224 Ariz. 389, 398 (Ct. App. 2010) (citing  
23 *AMERCO*, 184 Ariz. at 158; *Tovrea Land & Cattle Co. v. Linsenmeyer*, 100 Ariz. 107, 122  
24 (1966)). The general principle is that “a director or officer may not seize for himself, to the  
25 detriment of his company, business opportunities in the company’s line of activities in  
26 which it has an interest or prior claim.” *Id.* at n.20 (quoting *Tovrea*, 100 Ariz. at 122).  
27 However, the Arizona Supreme Court has “adopted a somewhat narrow view of the  
28 corporate opportunity doctrine,” finding that:

[t]he more precise test is whether the director has a specific duty to act in regard to the particular matter as a representative of the company. If there is no such duty, the director may acquire outside interests although the corporation may be more or less interested.

*Id.* (quoting *Tovrea*, 100 Ariz. at 122). “The opportunity must actually exist and not be merely ‘abstractly contemplated.’” *Powers Steel & Wire Prods., Inc. v. Vinton Steel, LLC*, No. 1 CA-CV 20-0652, 2021 WL 5495289, at \*7 (Ariz. Ct. App. Nov. 23, 2021) (quoting *Taser*, 224 Ariz. at 399).

Here, the Elk Valley project likely falls within the scope of a corporate opportunity for purposes of the corporate opportunity doctrine. Plaintiffs provide evidence showing numerous instances in which Defendant referred to the Elk Valley project as being TBH’s opportunity as well and in which Defendant’s actions implied that he was pursuing the project on TBH’s behalf. For example, after sharing the Elk Valley opportunity with TBH, Defendant pursued the project by engaging in discussions and conducting a meeting with members of the Elk Valley tribe and representatives of the County. In doing so, he referred to himself as TBH’s CEO and Partner—even though, at that point, he was merely TBH’s consultant—and he notified members of the tribe and the County of TBH’s involvement. (Doc. 16-2 at 5). Defendant also provided updates to Dr. Shufeldt and TBH concerning the Tribal Council’s apparent openness to the project. (*See, e.g.*, Doc. 2 at 3–4 (“Defendant informed . . . Dr. Shufeldt via text message that ‘the [tribal] council is on board’ and ‘willing [to let TBH] manage the [behavioral health] services.’”)). In various text messages and emails, Defendant referred to the Elk Valley project as belonging to “us” and being “ours”, implying that TBH had an interest in the project as well. (*See, e.g.*, Doc. 2-1 at 20, 22, 27, 33, 35–37). Defendant’s repeated representations concerning TBH’s involvement in the Elk Valley project support this Court’s finding that, once Defendant became CEO, he had a “specific duty” to act as a TBH’s representative in the company’s pursuit of the project. Thus, at least while he was acting as TBH’s CEO, Defendant had a duty to not seize the Elk Valley project for himself to the detriment of the company.

Critically, however, the fact that Defendant had a duty to not seize the project for

1 himself while he was CEO does not necessarily mean that he breaches that duty by pursuing  
2 the project after his resignation. This is because Defendant's fiduciary duties ceased upon  
3 his resignation from TBH. *See Standage*, 160 Ariz. at 291 (noting that fiduciary  
4 relationship ceases upon corporate officer's resignation or removal). Moreover, Arizona  
5 law provides that, while employees are generally "precluded from actively competing with  
6 [their] employer[s] *during* the period of employment," a former employee is "free to  
7 compete" with his former employer "in the absence of an enforceable non-compete  
8 agreement." *Taser*, 224 Ariz. at 394 (emphasis added). Indeed, the corporate opportunity  
9 doctrine "does not extend to all business ideas discussed or learned about in the course of  
10 employment because 'such an extension would have the effect of unnecessarily restraining  
11 competition' and 'would effectively transform an at-will employment relationship to one  
12 bound by a de facto non-compete agreement.'" *Powers Steel & Wire*, 2021 WL 5495289,  
13 at \*7 (citing *Taser*, 224 Ariz. at 399).

14 Here, it is undisputed that Defendant's fiduciary relationship with Plaintiffs ceased  
15 upon his resignation from the CEO position. It is also undisputed that Defendant never  
16 signed a non-compete agreement as it relates to Plaintiffs. (*See* Hearing Tr. at 42:21–43:2  
17 (both parties responding "no" when asked whether Defendant, at any point, signed  
18 noncompete agreement with TBH)). Thus, the fact that Defendant *now* seeks to pursue the  
19 Elk Valley project in his individual capacity does not appear, at first glance, to constitute a  
20 breach of his fiduciary duties to Plaintiffs because, as a former employee, Defendant is  
21 generally free to compete with Plaintiffs in the absence of a non-compete agreement.

22 The issue is not so simple, however, because Arizona law recognizes several  
23 limitations to the general principles articulated above. Although it is generally true that  
24 fiduciary duties cease upon employment termination and that former employees are free to  
25 compete in the absence of a non-compete agreement, courts have cautioned that "where a  
26 transaction has its inception *while the fiduciary relationship is in existence*, an employee  
27 cannot by resigning and not disclosing all he knows about the negotiations, subsequently  
28 continue and consummate the transaction in a manner in violation of his fiduciary duties."

1 *Standage*, 160 Ariz. at 291 (quoting *Microbiological Rsch. Corp.*, 625 P.2d at 695)  
 2 (emphasis added). This limitation does not apply here, however, because the Elk Valley  
 3 project had its “inception” *prior to* the existence of any fiduciary relationship. According  
 4 to Defendant, there were at least two discussions related to the development of a healthcare  
 5 facility for the Elk Valley tribe in early 2020 and again in May 2021. The Court finds that  
 6 these discussions were merely preliminary, speculative discussions, though, and that they  
 7 were not substantial enough to constitute the “inception” of the project. Instead, the most  
 8 substantive advancements of the Elk Valley project took place in March and April 2022.  
 9 By that point, the new casino had opened, leaving the old casino location vacant and  
 10 available for conversion into a healthcare facility. Defendant had substantive discussions,  
 11 including a formal meeting, with members of the Elk Valley Tribal Council and with  
 12 County representatives. Defendant relayed to TBH that the tribe was “on board” with the  
 13 project. Defendant also informed the County that TBH would prepare an analysis of the  
 14 proposed project for the County’s review. These developments—which this Court finds to  
 15 collectively constitute the “inception” of the Elk Valley project—took place while  
 16 Defendant was acting as TBH’s independent contractor consultant and *prior to* the  
 17 existence of any fiduciary relationship between Defendant and Plaintiffs. Therefore, this  
 18 case does not fall within the limitation provided in *Standage*.

19 Aside from the *Standage* limitation, Arizona law also recognizes that “an agent has  
 20 a duty (1) not to use property of the principal for the agent’s own purposes and (2) not to  
 21 use or communicate confidential information of the principal for the agent’s own  
 22 purposes.” *Taser*, 224 Ariz. at 396 (citing Restatement (Third) of Agency § 8.05).  
 23 Critically, these duties concerning the principal’s property and confidential information  
 24 continue *even after* termination of the employment relationship. *Id.* at 397 (citing  
 25 Restatement (Third) of Agency § 8.05 cmt. c). The duty of confidentiality is rather broad,  
 26 as it “extends to all such information concerning a principal even when it is not otherwise  
 27 connected with the subject matter of the agency relationship.” *Id.* (citing Restatement  
 28 (Third) of Agency § 8.05 cmt. c). However, a former employee does *not* violate the duty



1 of confidentiality by merely using “skills and more general knowledge, although learned  
2 in the course of work done for the former principal, in the course of competition.” *Id.*  
3 (quoting Restatement (Third) of Agency § 8.04 cmt. c).

4 Thus, Defendant’s individual pursuit of the Elk Valley project may breach his  
5 fiduciary duties to Plaintiffs—even *after* his resignation—if his pursuit is considered a use  
6 of Plaintiffs’ property or confidential information for Defendant’s own purposes. On this  
7 question, the Court finds evidence weighing both ways. On one hand, the Elk Valley  
8 project may be considered Plaintiffs’ “property.” The Restatement provides that the  
9 “property of a principal is defined broadly and includes intangible as well as tangible  
10 assets.” Restatement (Third) of Agency § 8.05 cmt. b. It further provides that a breach of  
11 the fiduciary duty may occur where “an agent . . . use[s] a principal’s property without the  
12 principal’s consent . . . by competing with the principal . . . or developing a business  
13 opportunity that should not have been taken personally by the agent.” *Id.* In this case, all  
14 substantive progress on the Elk Valley project was made while Defendant was acting as  
15 TBH’s consultant and presumably acting on TBH’s behalf. As discussed above, Defendant  
16 shared the opportunity with TBH, referred to the project as being TBH’s, held himself out  
17 as a TBH representative to the tribe and the County, disclosed TBH’s involvement to the  
18 tribe and the County, and regularly communicated the project’s progress to Dr. Shufeldt  
19 and others at TBH. Contrary to Defendant’s assertion that Plaintiffs contributed little to the  
20 project’s development, (Doc. 16 at 16), it was TBH who retained and paid Via Healthcare  
21 for the report that was intended to aid TBH’s final presentation of the project to the tribe  
22 and the County. These facts indicate that Plaintiffs had a distinct interest in and claim to  
23 the Elk Valley project, and they support a finding that the project constituted Plaintiffs’  
24 “property” that Defendant was precluded from using for his own purposes, even after his  
25 resignation. Likewise, the facts could also support a finding that the Elk Valley project was  
26 “confidential information” that Defendant was similarly precluded from using. As to a  
27 former employee’s duty of confidentiality, the Restatement provides that:

28 Many employees and other agents are given access by the



principal to information that the principal would not wish to be revealed or used, except as the principal directs. Such information may pertain to the principal's business plans, personnel, nonpublic financial results, and operational practices, among a range of possibilities. The value of some types of confidential information is recognized by trade-secret law, which protects "any information that can be used in the operation of a business or other enterprise and that is sufficiently valuable and secret to afford an actual or potential economic advantage over others."

Restatement (Third) of Agency § 8.05 cmt. c (quoting Restatement Third, Unfair Competition § 39). In his role as CEO, Defendant had access to all information concerning the Elk Valley project, including information that is "sufficiently valuable and secret to afford actual or potential economic advantage over others." *Id.* By resigning and pursuing the project on his own, a plausible argument could be made that Defendant used and intends to continue to use that information for his own benefit, in violation of his fiduciary duties.

On the other hand, there is also evidence suggesting that the Elk Valley project was not "property" or "confidential information" belonging to Plaintiffs. The project originated in discussions between Defendant and Ms. Green in early 2020, long before TBH was even in existence. It was Defendant who shared the prospective project with TBH, and it was Defendant who proposed the idea to the tribe and the County in March and April 2022. Defendant, and not TBH, was the sole point of contact concerning the project from the perspective of the tribe and the County. His central role in getting the project off the ground is underscored by Ms. Green's assertion that the Elk Valley tribe has no interest in pursuing the project without Defendant and that it was Defendant who they believed they were dealing with.<sup>9</sup> (Doc. 16-2 at 5–6). Although his efforts to develop the project during those

---

<sup>9</sup> The Court acknowledges Plaintiffs' contention that Ms. Green "does not claim to be speaking on behalf of the tribe or to be authorized to do so regarding this matter or anything else" and that her opinion should be discounted. (Doc. 17 at 8). Indeed, Ms. Green expresses this herself in her Declaration. (*See* Doc. 16-2 at 3 ("The facts stated herein are made in my individual capacity and I am not speaking for the Tribal Council, UIHS' Board of Directors or my family.")).

That said, Ms. Green has been a member of the Elk Valley Tribal Council since approximately 2003, and it is her family that owns the old casino property upon which the

1 months occurred while he was contracted as TBH's consultant, his role with TBH was  
2 merely as an independent contractor who had no fiduciary duties to Plaintiffs. At the  
3 Hearing, the parties indicated that Defendant was never even paid for his independent  
4 contract work, although this was apparently because Defendant never submitted an invoice  
5 to TBH. Even so, this fact supports an argument that Defendant never actually worked for  
6 TBH and that he pursued the Elk Valley project in his own capacity. Moreover, it is unclear  
7 what resources or other contributions Plaintiffs provided to develop the project, aside from  
8 paying for the Via Healthcare report. Rather, Defendant argues that Plaintiffs contributed  
9 little in pursuit of the project, and that the project is and always has been his own business  
10 opportunity. Altogether, these facts support a finding that Defendant's pursuit of the Elk  
11 Valley project is purely his own, and that it is not an improper use of Plaintiffs' property  
12 or confidential information.

13 In sum, the Court finds that there are at least serious questions going to the merits  
14 of Plaintiffs' breach of fiduciary duty claim. There are facts to indicate that Plaintiffs  
15 established an interest in the Elk Valley project such that the project constituted "property"  
16 or otherwise involved "confidential information" belonging to Plaintiffs. In that case,  
17 Defendant's post-resignation pursuit of the project arguably constitutes a use of Plaintiffs'  
18 property or confidential information in violation of his fiduciary duty to Plaintiffs. That  
19 said, there are also facts indicating that Defendant has an interest and prior claim to the Elk  
20 Valley project independent of his relationship with TBH. Such facts indicate that Plaintiffs  
21 did not have an exclusive interest in the project such that it became Plaintiffs' property or  
22 confidential information. In this regard, Defendant should be free to pursue the project,  
23 even if that means competing with TBH, because he no longer works for the company.

24 At this early stage of the case—and with the facts that have been provided—the  
25

---

26 proposed healthcare facility would be built. Moreover, the project was first conceptualized  
27 in conversations between Ms. Green and Defendant. Thus, the Court finds Ms. Green's  
28 statements to be informative while simultaneously recognizing that they only represent her  
own opinion and not that of anyone else.

1 Court simply cannot resolve this dispute. *See Int'l Molders' & Allied Workers' Loc. Union*  
 2 *No. 164 v. Nelson*, 799 F.2d 547, 551 (9th Cir. 1986) (citation omitted) (“In deciding a  
 3 motion for a preliminary injunction, the district court ‘is not bound to decide doubtful and  
 4 difficult questions of law or disputed questions of fact.’”). Therefore, given the competing  
 5 facts on this issue, Plaintiffs have failed to show a *substantial* likelihood of success on the  
 6 merits of their breach of fiduciary claim. However, the Court finds that Plaintiffs have  
 7 shown that there are at least serious questions going to the claim’s merits. As such, the  
 8 Court may still issue an injunction that enjoins Defendant from pursuing the Elk Valley  
 9 project, but *only if* Plaintiffs make particularly strong showings as to the “irreparable harm”  
 10 or “balance of hardships” factors.

## 11 **2. Misappropriation of Trade Secrets**

12 A claim for misappropriation of trade secrets under the Arizona Uniform Trade  
 13 Secrets Act, A.R.S. § 44-401 *et seq.*, requires the plaintiff to prove two elements: (1) that  
 14 a legally protectable trade secret exists and (2) that the defendant misappropriated the trade  
 15 secret through improper means. *Joshua David Mellberg LLC v. Will*, 96 F. Supp. 3d 953,  
 16 972 (D. Ariz. 2015). As to the first element, “[a] trade secret is information that derives  
 17 independent economic value ‘from not being generally known to, and not being readily  
 18 ascertainable by proper means by, other persons who can obtain economic value from its  
 19 disclosure or use’ and is ‘the subject of efforts that are reasonable under the circumstances  
 20 to maintain its secrecy.’” *HTS, Inc. v. Boley*, 954 F. Supp. 2d 927, 944–45 (D. Ariz. 2013)  
 21 (quoting A.R.S. § 44-401(4)). In other words, the first element is established if (i) the  
 22 subject matter of the information is secret and (ii) reasonable efforts were taken to keep the  
 23 information secret. *Calisi v. Unified Fin. Servs., LLC*, 232 Ariz. 103, 106 (Ct. App. 2013).  
 24 “A trade secret is not simply information as to single or ephemeral business events. Rather,  
 25 a trade secret may consist of a compilation of information that is continuously used or has  
 26 the potential to be used in one’s business and that gives one an opportunity to obtain an  
 27 advantage over competitors who do not know of or use it.” *Id.* (internal quotations omitted)  
 28 (citing *Enter. Leasing Co. of Phx. v. Ehmke*, 197 Ariz. 144, 148 (Ct. App. 1999)).

Here, Plaintiffs allege that Defendant misappropriated two trade secrets: (i) the Via Healthcare report and (ii) a list of customer/client leads. As to the Via Healthcare report, Defendant does not dispute that the report is confidential. Defendant argues that this is irrelevant, however, because Defendant has and will not use the report for any purpose because it is not helpful to him. (Doc. 16 at 15). That said, Defendant apparently still has the report in his possession and has not turned it over to Plaintiffs. Plaintiffs argue the report is a protectable trade secret because it has independent economic value (TBH paid \$51,000 for it) and because TBH made reasonable efforts to protect its secrecy by having Defendant sign a non-disclosure agreement. (Doc. 2 at 12). The Court finds that the Via Healthcare report is a legally protectable trade secret. The report contains a feasibility analysis intended “to provide information to [the] County and the Elk Valley tribe to assist in consummating the Elk Valley opportunity.” (*Id.* at 12–13). The independent economic value of such information is evident from the \$51,000 price which TBH paid for it. The information in the report is useful to a business—such as TBH—that is pursuing the development of a healthcare facility on tribal land and gives such a business an advantage over its competitors in securing the project. Additionally, the non-disclosure agreements and Defendant’s concession that the report is confidential support this Court’s conclusion that the report was the subject of reasonable efforts by TBH to maintain its secrecy.

As to the list of customer/client leads, Arizona law provides that customer information may constitute a legally protectable trade secret if it is “truly confidential and to a substantial degree inaccessible.” *Amex Distrib. Co., Inc. v. Mascari*, 150 Ariz. 510, 516 (Ct. App. 1986). For a customer list, “trade secret protection does not depend on whether the ‘list’ misappropriated is in written form or memorized.” *Calisi*, 232 Ariz. at 106. Instead, Arizona courts use a series of factors to determine whether a customer list may be entitled to trade secret protection. *Id.* Such factors include:

- (i) whether the list “represents a selective accumulation of detailed, valuable information about customers—such as their particular needs, preferences, or characteristics—that naturally ‘would not occur to persons in the trade or business’”;

(ii) whether the claimant “demonstrates it compiled the list by expending substantial efforts to identify and cultivate its customer base such that it would be difficult for a competitor to acquire or duplicate the same information”;

(iii) “whether the information contained in the customer list derives independent economic value from its secrecy, and gives the holder of the list a demonstrable competitive advantage over others in the industry”; and

(iv) “the extent to which the claimant divulged its customer list externally and internally, *i.e.*, to people outside of its business as well as to its own employees.”

*Id.* at 106–07 (citations omitted). In the present case, the list of customer/client leads sufficiently meets these factors. First, the list contains confidential business-opportunity leads for TBH. Defendant asserts that the list of leads contains only the names of federally recognized tribes and that—because such names are publicly available information—the list does not represent information that naturally would not occur to other persons in the industry. (Doc. 16 at 15). Plaintiffs argue that the list not only includes the names of the tribes, but also information about their receptivity to contact and about their self-identified needs, operational challenges, and staffing information. (Doc. 2 at 13). This Court’s in camera review of the list reveals that it does include more information than just the names of the tribes. For example, it includes specific points of contact for each tribe, information about their level of interest in a project, and whether they should be contacted. Moreover, given that TBH paid for these leads through a “third party, B2B lead vendor,” the Court finds that the list contains detailed, valuable information that would not naturally occur to persons in the trade or business and that the list was generated by expending substantial efforts such that it would be difficult for a competitor to acquire or duplicate it. The list presumably gives TBH a competitive advantage over others in the industry because it provides information—such as the unique healthcare needs or points of contact for each tribe—that can be difficult to obtain. Finally, there is no evidence that the list was divulged to anyone outside of TBH or even to others *within* TBH outside of Dr. Shufeldt and Defendant. All told, the Court concludes that Plaintiffs have shown that the list of

1 customer/client leads is a likely a legally protectable trade secret.

2 Turning to the second element, Defendant has apparently refused to turn over to  
3 Plaintiffs the Via Healthcare report or the list of customer/client leads, despite specific  
4 requests from Plaintiffs to do so. Although Defendant asserts he has no need for or intent  
5 of using either document, Defendant offered no reason—in his briefing or at the Hearing—  
6 to support his decision to keep them in his possession and away from Plaintiffs. Given that  
7 Defendant plans to continue his work in Plaintiffs’ industry—that is, developing healthcare  
8 projects on tribal lands—it stands to reason that the documents offer Defendant value.  
9 Defendant has not given the Court any reason to believe his contentions that he will not  
10 use them. Thus, the Court finds that Plaintiffs have established a likelihood of success on  
11 the merits of their misappropriation of trade secrets claim, as to both the Via Healthcare  
12 report and the list of customer/client leads.

### 13 **B. Irreparable Harm**

14 Having found serious questions going to the merits of Plaintiffs’ breach of fiduciary  
15 duty claim and a likelihood of success on the merits of his misappropriation of trade secrets  
16 claim, the Court now turns to the second *Winter* factor: whether Plaintiffs have shown that  
17 irreparable harm will result absent an injunction. To show irreparable harm, “a plaintiff  
18 must demonstrate immediate threatened injury.” *Caribbean Marine Servs. Co., Inc. v.*  
19 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). “Speculative injury does not constitute  
20 irreparable injury sufficient to warrant granting a preliminary injunction.” *Id.* (citing  
21 *Goldie’s Bookstore, Inc. v. Superior Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984)).  
22 A finding of irreparable harm also requires a finding that legal remedies, such as damages,  
23 are inadequate. *L.A. Mem’l Coliseum Comm’n v. Nat’l Football League*, 634 F.2d 1197,  
24 1202 (9th Cir. 1980) (citing *Sampson v. Murray*, 415 U.S. 61, 90 (1974)) (“The possibility  
25 that adequate compensatory or other corrective relief will be available at a later date, in the  
26 ordinary course of litigation, weighs heavily against a claim of irreparable harm.”). The  
27 Supreme Court has held that “plaintiffs must establish that irreparable harm is *likely*, not  
28 just possible, in order to obtain a preliminary injunction.” *All. for the Wild Rockies*, 632



1 F.3d at 1131 (citing *Winter*, 555 U.S. at 22). As noted above, because Plaintiffs here only  
2 showed serious questions—rather than a *substantial* likelihood of success—on the merits  
3 of their breach of fiduciary duty claim, Plaintiffs must make a *particularly strong* showing  
4 of irreparable harm to meaningfully succeed in enjoining Defendant from pursuing the Elk  
5 Valley project. Such a particularly strong showing is *not* necessary, however, with respect  
6 to the harms associated with Defendant’s alleged misappropriation of trade secrets.

7 Absent an injunction, Plaintiffs assert they will suffer irreparable harm because  
8 Defendant will impermissibly use Plaintiffs’ confidential information, steal Plaintiffs’  
9 customers, and otherwise harm Plaintiffs’ reputation and customer goodwill. (Doc. 2 at  
10 14–15). Indeed, courts have found that the loss of customers, business reputation, and  
11 customer goodwill *can* constitute irreparable harm. *See Krueger Invs., LLC v. Cardinal*  
12 *Health 110, Inc.*, No. CV 12-618-PHX-JAT, 2012 WL 3028349, at \*5 (D. Ariz. July 24,  
13 2012) (citations omitted) (“Courts can consider economic hardship, actual or threatened  
14 loss of customers, business reputation, and goodwill in determining the presence and  
15 sufficiency of irreparable harm.”). In this case, at least with respect to the Via Healthcare  
16 report and the list of customer/client leads, the Court agrees that Plaintiffs face a likelihood  
17 of irreparable harm absent an injunction enjoining Defendant from using those documents  
18 and ordering him to turn them over to Plaintiffs. The documents contain valuable business  
19 information that Plaintiffs paid for and that is useful in Plaintiffs’ business pursuits. Should  
20 such information fall into the hands of competitors, Plaintiffs may lose the business  
21 advantage that Plaintiffs rightfully obtained by paying third parties for the report and the  
22 customer leads. This is particularly true for a new company like TBH, which has not yet  
23 completed a substantial project and whose reputation in the Indigenous healthcare industry  
24 is therefore particularly vulnerable. More generally, the improper use or public disclosure  
25 of trade secrets—such as the report or list of customer/client leads in this case—“destroys  
26 the information’s status as a trade secret.” *Saini v. Int’l Game Tech.*, 434 F. Supp. 2d 913,  
27 919 (D. Nev. 2006) (citing *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1002 (1984)).  
28 “This harms the trade secret owner by both depriving him of a property interest . . . and by



1 allowing his competitors to reproduce his work without an equivalent investment of time  
2 and money.” *Id.* (citing *Winston Rsch. Corp. v. Minn. Mining & Mfg. Co.*, 350 F.2d 134,  
3 142 (9th Cir. 1965)). Such harms “are not readily addressed through payment of economic  
4 damages” and “are sufficient to meet the irreparable injury requirement for a preliminary  
5 injunction.” *Id.*

6 Turning to the Elk Valley project, Plaintiffs argue that, absent an injunction,  
7 Defendant will steal the project from TBH and cause irreparable harm to Plaintiffs’  
8 reputation and customer goodwill. (Doc. 2 at 14–15). According to Plaintiffs, the harm  
9 related to losing the Elk Valley project is particularly difficult to quantify “because,  
10 although negotiations are at a very advanced stage, a final agreement has not been reached.”  
11 (*Id.* at 15). Additionally, TBH is a new company, and the Elk Valley tribe is “essentially  
12 its first customer.” (*Id.*). Thus, Plaintiffs argue that the losing the Elk Valley project would  
13 cause “uncertain—but enormous—losses in terms of goodwill, reputation, and cascading  
14 lost opportunities across TBH and Tribal Health.” (*Id.*). Finally, Plaintiffs are concerned  
15 that Defendant has already damaged or even destroyed TBH’s goodwill with the Elk Valley  
16 tribe given that Defendant is now claiming that the tribe was never going to do business  
17 with TBH in the first place. (*Id.*).

18 The Court recognizes that the above harms exist but finds that they are speculative  
19 and overstated because Plaintiffs have failed to demonstrate that they have a legally  
20 protectable interest and exclusive claim to the Elk Valley project. Although unique harms  
21 may indeed exist where a new company such as TBH loses what is “essentially its first  
22 customer,” the Court’s extensive analysis with respect to the first *Winter* factor shows that  
23 TBH’s claim to the Elk Valley tribe as a client is more tenuous and uncertain than Plaintiffs  
24 represent. Aside from paying for the Via Healthcare report, there is little evidence that  
25 Plaintiffs meaningfully contributed to the March and April 2022 developments on the  
26 project. Instead, Defendant—who was acting as an independent contractor and was not  
27 paid by Plaintiffs for the work—was the primary force behind the progress that was made.  
28 Moreover, Ms. Green’s Declaration demonstrates that the Elk Valley tribe and the County

1 view Defendant as being more central to the project than TBH. Ms. Green even goes so far  
2 as to state that—if Defendant is enjoined from pursuing the project—she would withhold  
3 any recommendation that the Elk Valley tribe move forward on the project with TBH.  
4 While Ms. Green represents just one opinion on the issue, the Court cannot overlook her  
5 statements entirely, given that she is a member of the Tribal Council, and it is her family  
6 that owns the property where the healthcare facility is proposed to be built. Considering  
7 the real possibility that TBH has already lost the project with the resignation of Defendant,  
8 the Court cannot confidently conclude that enjoining Defendant from pursuing the project  
9 on his own would do anything to assuage the irreparable harms Plaintiffs assert. Even  
10 assuming Plaintiffs have shown some possibility of irreparable harm absent an injunction,  
11 Plaintiffs have failed to show that “the amount of harm the injunction will prevent is *very*  
12 great,” as is required where a plaintiff can only show “serious questions” going to the merits  
13 rather than a substantial likelihood of success. Thus, the irreparable harm factor weighs  
14 against issuing an injunction enjoining Defendant from pursuing the Elk Valley project.

### 15 **C. Balance of the Equities/Hardship**

16 As to the third required element for a preliminary injunction, the Court finds that  
17 the balance of hardships tips in Plaintiffs’ favor, but only with respect to injunctive relief  
18 aimed at protecting Plaintiffs’ trade secrets—*i.e.*, the Via Healthcare report and the list of  
19 customer/client leads. When analyzing this element, courts “must balance the competing  
20 claims of injury and must consider the effect on each party of the granting or withholding  
21 of the requested relief.” *Winter*, 555 U.S. at 24; see also *Int’l Jensen, Inc. v. Metrosound*  
22 *U.S.A., Inc.*, 4 F.3d 819, 827 (9th Cir. 1993) (“In evaluating the balance of hardships a  
23 court must consider the impact granting or denying a motion for [an] injunction will have  
24 on the respective enterprises.”).

25 Here, enjoining Defendant from disclosing or using the Via Healthcare report and  
26 the list of customer/client leads—and ordering him to return possession of those documents  
27 to Plaintiffs—would cause little hardship to Defendant because Defendant has repeatedly  
28 asserted, in his briefing and at the Hearing, that he has no need for the documents nor any

1 intention of using them. If Defendant truly has no use for the documents, then there are  
2 presumably no hardships to Defendant if he is enjoined from possessing or using them.  
3 Conversely, if such an injunction is *not* granted, Plaintiffs would have no access to the  
4 report, a document that they paid thousands of dollars for and that they assert will help  
5 them in their pursuit of the Elk Valley project. Likewise, Plaintiffs would also face the  
6 possibility that their list of customer/client leads—which Plaintiffs also paid for—could be  
7 used by Defendant to Plaintiffs’ detriment, or that the list could be disclosed to other  
8 competitors in the industry. The Court finds that, with respect to an injunction aimed at  
9 protecting Plaintiffs’ trade secrets, the balance of hardships tips sharply in Plaintiffs’ favor.

10       However, as to an injunction enjoining Defendant from pursuing the Elk Valley  
11 project on his own, the hardships are evenly balanced between the parties. As discussed  
12 extensively above, the facts of this case show that *both* parties can make plausible  
13 arguments relating to whether Plaintiffs’ have a legally protectable—and *exclusive*—  
14 interest in the project. Likewise, the parties can make equally plausible arguments as to  
15 why the balance of hardships tilts in their favor. From Plaintiffs’ view, the Elk Valley  
16 project stands as their first potential customer and “largest asset.” (Doc. 2 at 15). If  
17 Plaintiffs indeed have a legally protectable interest in the project, then it stands to reason  
18 that hardship would result if an injunction was not issued and Defendant was permitted to  
19 pursue, and potentially steal, the project for himself. Moreover, Defendant would not be  
20 harmed by an injunction at all because he would only be prohibited from usurping a  
21 business opportunity that belongs to TBH. Conversely, Defendant can make an equally  
22 compelling argument. From his view, the Elk Valley project was his from the beginning  
23 and TBH has no protectable interest in the project. If an injunction were issued, Defendant  
24 would be burdened by being enjoined from pursuing a project that belongs to him and that  
25 he has poured a great deal of time and effort into. In sum, the balance of hardships with  
26 respect to enjoining Defendant’s pursuit of the Elk Valley project could cut either way,  
27 depending on the legal extent of Plaintiffs’ interest in the project.

28       All told, the balance of hardships factor weighs strongly in favor of granting an

1 injunction relating to the Via Healthcare report and the list of customer/client leads. The  
 2 balance of hardships weighs neutrally as to an injunction relating to the Elk Valley project.  
 3 Thus, Plaintiffs have failed to meet their burden on the *Winter* factors—even under the  
 4 Ninth Circuit’s more generous, sliding-scale approach—with respect to injunctive relief  
 5 relating to the Elk Valley project.

#### 6 **D. Public Interest**

7 Finally, the Court finds that a preliminary injunction in this matter—at least in the  
 8 form issued by this Court—is in the public’s interest. “In exercising their sound discretion,  
 9 courts of equity should pay particular regard for the public consequences in employing the  
 10 extraordinary remedy of injunction.” *Pure Wafer Inc. v. City of Prescott*, 275 F. Supp. 3d  
 11 1173, 1179 (D. Ariz. 2017) (citing *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312  
 12 (1982)). “The public interest analysis for the issuance of a[n] injunction requires [the court]  
 13 to consider whether there exists some critical public interest that would be injured by the  
 14 grant of [injunctive] relief.” *Id.* (citation omitted). “The public interest inquiry primarily  
 15 addresses impact on non-parties rather than parties.” *Sammartano v. First Jud. Dist. Ct.*,  
 16 303 F.3d 959, 974 (9th Cir. 2002).

17 Plaintiffs’ argument on this factor is that an injunction would protect Plaintiffs’  
 18 business interests and rights as a company. Indeed, the public has interests in establishing  
 19 fair business practices and in encouraging innovation and invention. *See Compass Bank v.*  
 20 *Hartley*, 430 F. Supp. 2d 973, 983 (D. Ariz. 2006) (citation omitted) (“Courts have held  
 21 that the public interest is served by protecting a company’s right to proprietary information,  
 22 business operations, and contractual rights.”). The Court finds that an injunction ordering  
 23 Defendant to return the Via Healthcare report to Plaintiffs and otherwise enjoining  
 24 Defendant from disclosing or using the report or the list of customer/client leads would  
 25 advance the public interest by protecting Plaintiffs’ business operations and contractual  
 26 rights, including their trade secrets, confidential information, and customer base.

27 Defendant argues that an injunction is *against* the public interest because it would  
 28 roadblock the development of tribal healthcare facilities. Defendants assert that the public

1 has an interest in improving healthcare for underserved Indigenous communities. While  
2 this is a valid public interest, the Court does *not* find that an injunction ordering Defendant  
3 to return the Via Healthcare report to Plaintiffs and otherwise enjoining Defendant from  
4 disclosing or using the report or the list of customer/client leads would negatively impact  
5 Indigenous communities in a meaningful way. Defendant is not the only individual who  
6 can bring healthcare projects to fruition on tribal land. Moreover, Defendant could still  
7 pursue projects with tribes which are not on Plaintiffs' list of customer/client leads.  
8 Additionally, because this Court will not enjoin Defendant from pursuing the Elk Valley  
9 project, there is no reason to believe that the Elk Valley project would be roadblocked from  
10 moving forward, whether that be with Plaintiffs, Defendant, or some other entity seeking  
11 to develop the healthcare facility for the Elk Valley tribe.

12 All told, this factor weighs in favor of an injunction, albeit a more limited injunction  
13 than that requested by Plaintiffs. To the extent Plaintiffs seek an injunction protecting their  
14 business interests in the Via Healthcare report and the list of customer/client leads, the  
15 Court finds that such an injunction would be in the public interest.

#### 16 **IV. CONCLUSION**

17 According to the Ninth Circuit, the scope of "an injunction must be narrowly  
18 tailored . . . to remedy only the specific harms shown by the plaintiffs, rather than 'to enjoin  
19 all possible breaches of the law.'" *Price v. City of Stockton*, 390 F.3d 1105, 1117 (9th Cir.  
20 2004); *see also Nat'l Ry. Lab. Conf. v. Int'l Ass'n of Machinists & Aerospace Workers*, 830  
21 F.2d 741 (7th Cir. 1987) (reviewing a district court's grant of preliminary injunction to  
22 determine "whether the scope of the injunctive provisions is wider than that necessary to  
23 prevent irreparable harm"). Here, Plaintiffs have succeeded in showing a likelihood of  
24 success on the merits of their misappropriation of trade secrets claim. The irreparable harm  
25 arising out of that claim relates only to the Via Healthcare report and the list of  
26 customer/client leads. Conversely, Plaintiffs showed that only "serious questions" existed  
27 as to the merits of their breach of fiduciary duty claim. That claim primarily concerned the  
28 Elk Valley project. Thus, to obtain an injunction enjoining Defendant from pursuing the

1 project, Plaintiffs were tasked with making particularly strong showings on either the  
2 irreparable harm factor or the balance of hardships factor. Plaintiffs failed to do so.

3 The Court must narrowly tailor its preliminary injunction to remedy only the  
4 particular harms that Plaintiffs have made sufficient showings on. Thus, the Court will  
5 enjoin Defendant from disclosing or otherwise using the Via Healthcare report and the list  
6 of customer/client leads. The Court will also order Defendant to turn those documents over  
7 to Plaintiffs. The Court will not, however, enjoin Defendant from pursuing the Elk Valley  
8 project in his individual capacity.

9 Accordingly,

10 **IT IS ORDERED** that Plaintiffs' Motion for Temporary Restraining Order and  
11 Preliminary Injunction (Doc. 2) is **granted in part and as modified** to the extent Plaintiffs  
12 request a preliminary injunction.

13 **IT IS FURTHER ORDERED** that the Court enters a preliminary injunction as  
14 follows:

- 15 1. Defendant, or any persons or entities acting in concert with or on his behalf, shall  
16 **identify and sequester** any and all business information, records, or documents  
17 in his or their possession containing Plaintiffs' "Confidential Information" as  
18 that term is defined in the parties' Confidentiality and Non-Disclosure  
19 Agreement. This includes the Via Healthcare Consulting Report, TBH and  
20 Tribal Health customer lists or files, and proprietary marketing plans and/or  
21 pricing data.
- 22 2. Defendant, or any persons or entities acting in concert with or on his behalf, shall  
23 be **enjoined** from **using, referring to, or divulging** TBH and Tribal Health  
24 business information, records, or documents containing Confidential  
25 Information or violating any provision of his Confidentiality and Non-  
26 Disclosure Agreement.

27 ///

28 ///

